

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JAIPUR BENCH, JAIPUR

::JUDGMENT::

BANNA LAL VS. THE STATE OF RAJ. & ORS.

D.B.CIVIL SPECIAL APPEAL (W) NO.784 OF 2006
UNDER ARTICLE 225 OF THE CONSTITUTION OF INDIA READ
WITH RULE 135 OF THE RAJASTHAN HIGH COURT RULES
1952 AGAINST THE JUDGMENT/ORDER DATED 27TH APRIL
2005 PASSED IN SBCWP NO.7019/1997.

DATED OF JUDGMENT :: 4.1.2007

PRESENT

HON'BLE MRS.GYAN SUDHA MISRA, J.
HON'BLE MR.K.C.SHARMA, J.

Mr. JK Yadav for the appellent.

BY THE COURT:

This appeal has been preferred against the order of the learned Single Judge dated 27.4.2005 whereby the writ petition filed by the petitioner was dismissed as the learned Single Judge was pleased to hold that the petitioner/appellant herein although asserted that he had qualified in the prescribed test for the post of Sub-Inspector, the contention is not correct as the petitioner/appellant had failed to obtain 50% marks which was the minimum required qualifying marks. It has been recorded therein that the petitioner secured 153.5 marks out of 350 which is less than 50%. It is on this ground that the petitioner/appellant was held ineligible for appointment and the writ petition seeking the relief of appointment on the post of Sub-Inspector was rejected.

The petitioner/appellant before the learned Single Judge had categorically submitted that he had qualified in the prescribed test for the post of Sub-Inspector and despite

being senior in the cadre he was not granted promotion to the post of Sub-Inspector. The counsel for the appellant has now attempted to broaden the scope of the appeal and has submitted that according to his case he had qualified in the prescribed test for had he been allotted the right marks for each question, he should have been held qualified after rectification of his mark-sheets. The learned Single Judge had rejected the plea of the appellant to summon the answer sheets in the Court and it is now submitted that this exercise having not been undertaken by the learned Single Judge, the petitioner/appellant should have been held qualified in the prescribed test.

It is difficult for the appellate Court to entertain this plea straightway by accepting the contention that the petitioner/appellant had obtained the qualifying marks if the answer sheets had been rightly checked and the prescribed marks had been allotted. In our view the petitioner/appellant ought to have established this fact before the learned Single Judge that he had not been rightly awarded the qualifying marks but if such a plea was not raised before the learned Single Judge, the same cannot be entertained at the stage of appeal as this amounts to improvement of the case of the appellant at the stage of appeal. Besides, this exercise hinges upon appreciation of a question of fact which cannot be entertained at the stage of appeal and therefore, it is not possible for this Court to entertain this appeal on the ground that the petitioner/appellant had been illegally denied appointment by promotion to the post of Sub-Inspector. If the appellant

failed to obtain the minimum qualifying marks, it was not right on his part to contend before the learned Single Judge that he had obtained the minimum qualifying marks as he should have approached the learned Single Judge stating that he was wrongly not awarded 50% marks which was the required qualifying marks. We thus find no perversity in the order of the learned single Judge and it is not possible to hold that the appellant was wrongly denied appointment by promotion although he had received the qualifying marks. The existing position under the present situation is that the petitioner/appellant had failed to secure the minimum qualifying marks which would have held him eligible for promotion to the post of Sub-Inspector. The plea that he would have been held qualified if he had rightly been awarded marks in his answer sheets, is a hypothetical contention and therefore this cannot be examined by the appellate forum. The appeal thus has no substance and hence it stands dismissed at the admission stage itself.

(K.C.SHARMA)J.

(GYAN SUDHA MISRA)J.

PCG